

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:09-cr-10054-MLW-1

4
5 UNITED STATES OF AMERICA

6
7 vs.

8 HUMZA ZAMAN
9

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11 *****

12 For Hearing Before:
13 Chief Judge Mark L. Wolf

14
15 Sentencing

16
17 United States District Court
18 District of Massachusetts (Boston.)
19 One Courthouse Way
20 Boston, Massachusetts 02210
21 March 11, 2010

22 *****

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1 P R O C E E D I N G S

2 (Begins, 3:00 p.m.)

3 THE CLERK: Criminal Matter 09-10054, the
4 United States versus Humza Zaman. The Court is in
5 session. You may be seated.

6 THE COURT: Good afternoon. Would counsel
7 please identify themselves for the Court and for the
8 record.

9 MR. HEYMANN: Your Honor, Stephen Heymann on
10 behalf of the government.

11 MR. BRACKLEY: Patrick Brackley for the
12 defendant, Mr. Zaman. Good afternoon, Judge Wolf, sir.

13 THE COURT: Good afternoon.

14 All right. We're here today for Mr. Zaman's
15 sentencing.

16 Mr. Heymann, does the Government believe there are
17 identifiable victims who the law requires to be notified
18 of this proceeding?

19 MR. HEYMANN: No, it does not, your Honor.
20 The nature of the defendant's conduct, in this
21 particular matter, was, um -- involved variants of money
22 laundering, but the government cannot link the
23 particular money that he was laundering to a particular
24 victim, and for that reason the government does not
25 believe that there are particular victims that are

1 required to be here today.

2 THE COURT: Okay. That was my understanding
3 from reading the presentence report.

4 This is a sentencing that was originally scheduled
5 for August of 2009. In response to a joint motion to
6 continue it, I rescheduled the matter for February 10,
7 2010. On February 8th, the defendant's attorney filed a
8 motion to continue that sentencing hearing because of
9 other matters on his schedule and stated that he would
10 be available any day of the week of March 8th, so
11 therefore I scheduled the sentencing for today. Two
12 days ago, on March 9, I received another motion to
13 continue. Yesterday, on March 10, the government
14 opposed that motion. And yesterday, for reasons
15 described in my order, I denied that request.

16 Is there any impediment to proceeding today?

17 MR. BRACKLEY: No, Judge, I'm happy to be
18 here, your Honor. Thank you, sir.

19 THE COURT: Okay. I have the presentence
20 report as to which there are no objections from the
21 defendant. I have the government's sentencing
22 memorandum. I have a release letter reporting on the
23 defendant's compliance with his conditions of release,
24 that with regard to one matter dated March 10, 2010.

25 Is there anything else I should have received and

1 read?

2 MR. BRACKLEY: No, your Honor.

3 MR. HEYMANN: No, your Honor.

4 THE COURT: Okay. I'd like to try to assure
5 we have a common sense of the legal framework. We're
6 operating under the Advisory Guideline System now in
7 effect. That legal framework is succinctly described, I
8 believe, by the Supreme Court in **Gall**.

9 It instructs that "A district court should begin
10 all sentencing proceedings by correctly calculating the
11 applicable guideline range. The guidelines should be
12 the starting point. The guidelines are not the only
13 consideration, however. After giving both parties an
14 opportunity to argue for whatever sentence they deem
15 appropriate, I must consider all of the Section 3553(a)
16 factors to determine whether they support the sentence
17 required by the parties. I may not presume that the
18 guideline range is reasonable. I must make an
19 individualized assessment based on the facts presented.
20 If I decide a departure or a variance is justified, a
21 major departure must be supported by a more significant
22 justification than a minor one, and I must explain the
23 reasons for the sentence I ultimately impose."

24 Do the parties agree that's a fair statement of
25 the legal framework?

1 MR. HEYMANN: Yes, your Honor.

2 MR. BRACKLEY: Yes, Judge.

3 THE COURT: We're operating under the
4 guideline manual now in effect with the amendments
5 effective November 1, 2009.

6 Mr. Brackley, have you and Mr. Zaman each read the
7 presentence report?

8 MR. BRACKLEY: Yes, Judge.

9 THE COURT: And there are no objections. But
10 is there anything that you or he feel is inaccurate?

11 MR. BRACKLEY: No, Judge.

12 THE COURT: And, Mr. Zaman, did you read the
13 presentence report?

14 THE DEFENDANT: I did, your Honor. Yes, sir.

15 THE COURT: And is there anything in there you
16 feel is inaccurate?

17 THE DEFENDANT: Um, the only thing is there is
18 a date for the state trial of like the 24th, I believe,
19 at the moment.

20 THE COURT: Okay. And this is for the
21 possession of the knife -- the alleged possession of the
22 knife?

23 THE DEFENDANT: Right.

24 THE COURT: And you're saying there is a date
25 for that event?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay. I'll make a mental note of
3 that. But I can tell you that, at this time, I don't
4 view the allegations concerning the knife to be what we
5 call "material." I'm not going to take them into
6 account in deciding what the sentence should be. It
7 doesn't affect the guideline range. As far as I know,
8 the government's not basing its argument on it.

9 MR. HEYMANN: Your Honor, the government
10 concurs completely that it has no bearing whatsoever on
11 the sentencing guidelines here or on the sentence that
12 the Court is going to consider for this offense. To
13 whatever extent it has any bearing, it has on later
14 release issues, but nothing concerning the sentencing
15 itself.

16 THE COURT: Okay. So I'm going to impose the
17 sentence I would have imposed as if the knife -- that
18 information about the knife was not in the presentence
19 report. Okay?

20 THE DEFENDANT: Thank you, your Honor.

21 THE COURT: All right. So I believe that the
22 government's objections all resulted in corrections.
23 There's nothing on which I need to rule. Is that
24 correct?

25 MR. HEYMANN: Yes, that's correct, your Honor.

1 THE COURT: Therefore, as I understand it, the
2 Total Offense Level is 23, the Criminal History Category
3 is 1, the guidelines are 46 to 57 months in prison and
4 24 to 36 months supervised release, a fine range of
5 10,000 to 100,000 dollars, and a 100 dollar special
6 assessment.

7 Do the parties agree that those are the guideline
8 ranges?

9 MR. HEYMANN: Yes, your Honor.

10 MR. BRACKLEY: Yes, Judge.

11 THE COURT: Okay. What then is the
12 government's recommendation and what are the reasons for
13 it, please?

14 MR. HEYMANN: Your Honor, the government's
15 recommendation is the low end of that guideline range,
16 which is 46 months incarceration, a 75,000 dollar fine
17 -- an amount intended to equal the approximate amount
18 that the defendant, um, was paid during the course of
19 the conspiracy, no restitution in light of 18 U.S.C.
20 Section 3663(a)(1)(B)(ii), the section that we actually
21 alluded to earlier, a 100 dollar special assessment, 3
22 years supervised release, and then as, um, a condition
23 of that supervised release, that the defendant, um, not
24 have access to third parties' identity or financial
25 records absent prior approval of his supervising

1 probation officer, and that, um, any employer that he
2 might be employed by during that period of supervision,
3 that, um, who would have access to that kind of
4 information, would be provided a copy of the indictment
5 in this case, to which he has pled guilty, so that the
6 employer could make a full and knowledgeable decision as
7 to what his view was as to whether or not he should have
8 access to it.

9 THE COURT: Okay. And what are the reasons
10 for the recommendation, please?

11 MR. HEYMANN: I'm sorry, your Honor. The
12 reasons for the recommendation are the following. I
13 want to be -- Humza Zaman was part of an organization
14 that committed computer crimes and identity thefts on an
15 unprecedented scale. Absolutely unprecedented. The
16 government, um, has not alleged, nor does it want to
17 allege here that the defendant himself participated in
18 the hacking into the computer networks or participated
19 into the data theft itself, but he was fully
20 knowledgeable of what was going on. He was intimate
21 friends of Steven Watt who prepared the program that was
22 used in --

23 THE COURT: You mean he was "close" friends?

24 MR. HEYMANN: Close friends. Yes, close
25 friends. He was close friends with Steven Watt. He

1 was, as he pled guilty to and he did, in fact, do, he
2 sent, um, confidential records from his own employer
3 down to Albert Gonzalez to see whether Albert Gonzalez
4 could take advantage of those. He knew what --

5 THE COURT: This was Barclays -- he was
6 working at Barclays Bank in what capacity?

7 MR. HEYMANN: As a -- in computer systems. In
8 the security part of the computer systems.

9 THE COURT: And he sent something called
10 "logs" of Barclays?

11 MR. HEYMANN: Logs. The computer keeps
12 records of what it's doing and the records are simply
13 called "logs," and he sent logs of ATM transactions that
14 the computer was keeping down to Albert Gonzalez to see
15 whether he could take advantage of those logs. So he
16 knew what Albert Gonzalez was doing, he knew what the
17 organization was doing, but there's no allegation that
18 he, himself, was a perpetrator of one of the intrusions.

19 But that having been said, though, an organization
20 of this size, of this magnitude, does not function,
21 cannot function unless it can sell its goods, and once
22 it sells its goods, whether it can get its money and
23 distribute it and pay its people.

24 As the presentence report reflects, Christopher
25 Scott was paid somewhere between 300 and 500,000 dollars

1 in cash over time, Patrick Tuey received something less
2 than \$100,000, the defendant received about \$75,000.
3 The business functions for the purpose of getting cash
4 and needs cash and needs to get it back into the country
5 in a form that it can pay its people and profit from it,
6 and his role was critical in that regard.

7 So the government's recommendation of --

8 THE COURT: So why don't you remind me of what
9 his role was?

10 MR. HEYMANN: I'm sorry.

11 THE COURT: I mean, I've read this, but --

12 MR. HEYMANN: I'm sorry, your Honor. What
13 happened here is the following.

14 Albert Gonzalez often required that he be paid
15 either in transfers to a bank account in Latvia, one or
16 more bank accounts in Latvia, or he be paid in web
17 currencies, virtual currencies that you can exchange
18 over the Internet. Egold used to be one of them,
19 purportedly tied to a gold standard, which may or may
20 not have existed, but Egold used to be one of them. Web
21 Money, out of Russia, is another one. But these virtual
22 currencies or the Latvian bank accounts, while extremely
23 good for concealing the source origin of the proceeds of
24 this illegal activity, doesn't provide any cash that you
25 can spend in the United States. And you've got to get

1 that back into the United States and you've got to, once
2 you get it back into the United States, you've got to
3 get it down to Albert Gonzalez.

4 So one thing the defendant did is Albert Gonzalez
5 gives him the name -- this is the first \$38,000, gives
6 him some fictitious names belonging to fictitious or,
7 um, straw account holders in Latvia. He goes to an ATM
8 in New York, pulls out \$38,000, takes his cut, and sends
9 it down to Albert Gonzalez.

10 On another occasion, another group of occasions,
11 Albert Gonzalez manages to get the money available in
12 San Francisco.

13 THE COURT: Well, let me ask you this. Taking
14 it from the ATM, did that require any of the defendant's
15 computer expertise?

16 MR. HEYMANN: It does not require -- it
17 requires him simply to have an ATM card with false
18 information on it, or an ATM card of somebody else's,
19 but it did not require his computer expertise, no.

20 THE COURT: So somebody else gave him the
21 card?

22 MR. HEYMANN: Somebody else gave him the card
23 or the card number, yes. I guess the most candid way of
24 putting it is that I could do it. If somebody gives me
25 the card number, I could go up to the machine and do

1 it.

2 Um, it was a big hunk of money and, as I said in
3 the description to the Court, I can only approximate it
4 because nobody has -- there are no critical records of
5 it, but this is three transactions of somewhere between
6 50 and \$370,000 apiece. We know of the \$370,000 one
7 because, again, on a logged chat communication, we can
8 see Albert Gonzalez telling him that \$375,000 is
9 available. Um, he then flies out to San Francisco,
10 meets with somebody who is of foreign descent, gets
11 handed several hundred thousand dollars in cash, and
12 gets it back to Albert Gonzalez in a way that completely
13 protects Gonzalez from any linkage to the money.

14 THE COURT: But gets it back -- so he's a
15 courier?

16 MR. HEYMANN: He ships it back. I mean, he's
17 -- he wasn't actually physically shipping it back, but
18 he is the courier in the transaction.

19 THE COURT: But, again, he wasn't using his
20 expertise with computers to repatriate the money for the
21 United States?

22 MR. HEYMANN: That's correct. The only time
23 he ever uses his expertise with computers is the time
24 that the Court raised earlier about the Barclays system
25 logs, um, and that we do not have any evidence that

1 those Barclays system logs were ever, in fact, used in
2 an improper way. But what they do evidence is his
3 knowledge of Albert Gonzalez and the activities that he
4 was involved in. And the last thing that happens is, on
5 three occasions, each for something less than \$100,000,
6 he meets with yet another stranger, on these occasions
7 in New York, again is given cash, and again sends it
8 down to Albert Gonzalez.

9 It's impossible to say with exact precision -- or
10 with precision -- well, I guess, "precision" is always
11 exact, um, how much that is. The guideline range is
12 400,000 to a million. There's no evidence that it went
13 over a million dollars. Because we start with 38,000
14 and 370,000, so we know it's over 400,000, and the best
15 approximation is 6 to 800,000, roughly 700,000 in the
16 mail.

17 THE COURT: Okay. Thank you. Mr. Brackley.

18 MR. BRACKLEY: Yes, Judge. As I think the
19 Assistant United States Attorney accurately
20 characterizes, Mr. Zaman, I think, found himself as a
21 gopher carrying money, ferrying money, which was
22 obviously the illegal proceeds of what we now know to be
23 a sprawling conspiracy, and I think, Judge, that your
24 questions as to what his role was are accurate in the
25 sense that he was on the foothold of becoming a much

1 more complex fraudster, if I think he had not been
2 arrested, is I think what Mr. Heymann was saying.
3 However, he was fortunately not given that opportunity.

4 But what I think the record will bear out is that
5 he, at the time, got himself involved with these
6 individuals who were living "the high life," as you
7 would say, a tremendous amount of drugs, every
8 recreational drug known to man --

9 THE COURT: Well, where do I see that in the
10 record?

11 MR. BRACKLEY: I think it's in the presentence
12 report, your Honor.

13 THE COURT: I mean, I have a -- I mean, I do
14 have a report regarding his drug use in the period, but
15 I didn't see a nexus with Mr. Gonzalez or the others in
16 the presentence report, I don't think.

17 MR. BRACKLEY: It's -- Mr. Zaman actually came
18 to meet his co-conspirators in hanging around in clubs
19 and using drugs and that is how he was ensnared into the
20 conspiracy. Only then they became friends and
21 associates and then he began to use the opportunity to
22 commit crimes for them for whatever cash they would give
23 to him. And I believe, Judge, as you're aware, this is
24 the first time that he's ever been arrested.

25 He, I believe, got into this conspiracy at a time

1 close to the death of his father. He had been, as they
2 say, lost in the world and these individuals provided
3 him with some way to make easy money. Um --

4 THE COURT: He was making \$130,000 a year at
5 Barclays.

6 MR. BRACKLEY: That's correct.

7 THE COURT: That's not, for most people, a
8 desperate financial situation.

9 MR. BRACKLEY: That's correct, Judge, but it
10 was cash and it went along with the club scene that this
11 man found himself in with these individuals. I think
12 that's how the money --

13 THE COURT: All right. Excuse me just one
14 second.

15 (Pause.)

16 THE COURT: Go ahead.

17 MR. BRACKLEY: Judge Wolf, I would also
18 request the low end in that this man did not involve
19 himself in any of the complicated computer
20 transactions. That Barclays situation, I think, shows
21 that he was trying to do that, at some point, but
22 fortunately all of that was thwarted. As the assistant
23 says, there's no evidence that that resulted in any
24 further loss or any further crime.

25 So I would ask, Judge, similarly for the low end

1 of that guideline range in that there's no substantial
2 aggravating factors here that would warrant an upward
3 departure in any regard.

4 THE COURT: Mr. Zaman, you now have an
5 opportunity but not an obligation to speak before I
6 decide what sentence to impose. That means you don't
7 have to say anything, if you don't want to, but if
8 there's something you would like to say, now is the
9 time.

10 THE DEFENDANT: Um, I'm sorry, your Honor.
11 You're right. You know, um, 130 was not really
12 desperate financial times. I mean, looking back on it,
13 you know, just knowing that I'm probably not going to be
14 able to make that kind of cash income for the rest of my
15 life, whereas it is, you know, pretty much certain that,
16 even if I continue down the right path, it's definitely
17 something I will recognize every day now. And I realize
18 there's no -- there's no real excuse for, you know, just
19 wanting to enhance your lifestyle to a level that you
20 don't really deserve even if, you know, the opportunity
21 definitely was too good to be true, um, in any real
22 sense.

23 And, um, I'm trying to, you know, like build some
24 semblance of a career and, you know, like -- you know,
25 it's been hard, you know, with all the add-on elements

1 that happen in your life when undergoing a situation
2 like this. But I have, you know, I've been clean, as
3 far as my substance issues go, and I would just ask the
4 Court for, um, an opportunity to perhaps rebuild what
5 life I can.

6 THE COURT: Well, let me ask you this. Your
7 attorney asked me to give you the same sentence that the
8 government asked me to give you, 46 months. Would you
9 ask me to give you a lower sentence than that?

10 THE DEFENDANT: I would, your Honor, you know,
11 if it's possible. I mean, incarceration seems a little
12 bit harsh to me. Obviously it's not my call, but it
13 just -- you know, your Honor, I know what I did, um, is
14 pretty, um -- and, you know, the extent of the
15 guidelines are pretty scary, but, you know, I don't -- I
16 mean, I would just ask to, you know, um, to not be
17 incarcerated, if I can.

18 THE COURT: All right. And I had noticed from
19 the presentence report that you've been taking some
20 courses, I think, on financial planning through the
21 Harvard Extension School. Is that right?

22 THE DEFENDANT: Right. Well, I finished that
23 one now and I'm hoping, in the summer, if I'm around, to
24 go full time there, because I've met the requirements
25 necessary for full-time enrollment there.

1 THE COURT: Okay. And am I right that you
2 haven't told your family or other people about the
3 charge against you?

4 THE DEFENDANT: Well, I haven't told my mom
5 because, you know, she's like relatively recently
6 widowed and I would -- I mean, I'm just going to try not
7 to ever have her find out, to be honest, your Honor, um,
8 you know, if I can do it, even, whatever happens, you
9 know, as long as it doesn't, you know, like affect her.
10 And my sister and, you know, brother, you know, they --
11 it will get back to her. I mean, some of my closest
12 friends do know. I've called them pretty much. But as
13 long as long as my mom -- well, it's a tough call
14 because, you know, it might be necessary for her to have
15 been prepped, depending on what my sentence is, but if
16 she finds out another way, um, how bad that could be.
17 But I think it's just a decision I kind of made to like
18 try to mask her from this as long as I humanly possibly
19 can.

20 THE COURT: Thank you. Here, let me just ask
21 you a couple of other things to make sure that I
22 understand. You mentioned one.

23 You haven't tested positive for drugs while you've
24 been out on pretrial release, right?

25 THE DEFENDANT: No, your Honor.

1 THE COURT: And you've been able to do the
2 Harvard Extension School and start a couple -- try to
3 start a couple of businesses, is that right?

4 THE DEFENDANT: Basically, yes, your Honor.

5 THE COURT: All right. And you certainly seem
6 to understand what I've said today and you've responded
7 to it.

8 You do understand what's going on here today?

9 THE DEFENDANT: Um, yeah. Yes, sir.

10 THE COURT: And have you talked to
11 Mr. Brackley in preparation for the sentencing today?

12 THE DEFENDANT: I mean, yeah, right before it,
13 we spoke briefly. Yes, your Honor.

14 THE COURT: Okay. You may seated for a
15 moment.

16 THE DEFENDANT: Thank you.

17 (Is seated.)

18 THE COURT: All right. Mr. Zaman, please
19 stand.

20 (Defendant stands.)

21 THE COURT: In connection with the one count
22 to which you've pled guilty, I hereby sentence you to
23 serve 46 months in the custody of the Attorney General
24 of the United States to be followed by 3 years of
25 supervised release on the standard conditions and --

1 which include that you do not commit another crime, that
2 you provide a DNA sample, and the following special
3 conditions:

4 You may not possess a firearm or other dangerous
5 weapon, including a knife. You must pay a 75,000 dollar
6 fine on a schedule that I will determine. You may not
7 have access to any third-party identification issue or
8 financial records without the express approval, in
9 advance, of Probation.

10 You must inform any potential employer of the
11 charges and conviction against you and if you're seeking
12 any position involving finance, you must not incur any
13 new credit charges or open any additional lines of
14 credit without the approval of the Probation Office as
15 long as any of your financial obligations are
16 outstanding. You must provide the Probation Office
17 access to any requested financial information which may
18 be shared with the United States Attorney.

19 You must participate in a program for drug testing
20 and treatment, as prescribed by Probation, which can
21 include up to 104 tests a year. If you have the funds
22 or the insurance to pay or contribute to the cost, you
23 must pay or contribute to the cost of that treatment.
24 There's also a mandatory 100 dollar special assessment.

25 In your plea agreement, you've waived your right

1 to appeal except with regard to any legally-incorrect
2 guideline calculation. There's been no objection to the
3 guideline calculation, but if you want to appeal on that
4 basis and you cannot afford a lawyer, one will be
5 appointed to represent you at public expense.

6 What I've done is give you the sentence that I
7 find is sufficient and no more than necessary to serve
8 the statutory goals of sentencing. And while maybe some
9 additional arguments could have been made on your
10 behalf, I don't imagine, based on the information I
11 have, how they would have altered the sentence. I
12 actually thought of giving you a higher sentence because
13 -- and I think the statute provides the framework for
14 explaining this and I'm going to explain to you why I
15 think that those 46 months are the minimum necessary to
16 serve the purposes that a sentence is required to serve.

17 I've had to consider your personal history and
18 characteristics. And I regularly sentence people who
19 come from very difficult backgrounds or who have mental
20 illnesses, and that's not you. A look at the
21 presentence report tells me that you were born into a
22 fine family, that you were blessed with real
23 intelligence, that you had the highest SATs, I think, in
24 your high school in New York, that you got the
25 opportunity to leave high school and go to college

1 early, but that you ended up back in high school because
2 of drug use, if I read it correctly. But you're an
3 intelligent person who was raised in a family that
4 didn't abuse you.

5 You had progressively more responsible jobs that
6 paid you better and better. You know, it looks like, in
7 five to six years, you went from making about \$30,000 to
8 making \$130,000. You were very adept with computers.
9 You had a good future. And the history -- the nature
10 and circumstances of the offense is you voluntarily got
11 in with people that you knew were swindlers on a huge
12 scale and simply for greed, as far as I can see, decided
13 to try to help them succeed. And here you've been
14 punished for being the courier, but, you know, you took
15 confidential information of your employer, Barclays
16 Bank, and gave it to Mr. Gonzalez and asked him if he
17 could find some criminal use for it. This doesn't
18 demonstrate any kind of reluctance.

19 The sentence has to recognize the seriousness of
20 the offense and your guidelines haven't been calculated,
21 your sentence hasn't been decided based on the huge
22 scope of the international fraud, but moving money
23 around was an important part of it and you moved a lot,
24 and you didn't do it just once, you did it several times
25 and you did it for the most conventional of motives, as

1 far as I can tell, greed.

2 The sentence has to be sufficient to send two
3 kinds of messages and one is to you, that this is
4 serious and you'd better not do it again. It also needs
5 to send a message to other people like you, similarly
6 situated to the way you were several years ago, you
7 know, to people who may be bright, who may have
8 responsible positions, but who may want even more and
9 have attempted to engage in illegal conduct to get more
10 money. The sentence needs to send the message that
11 that's not just wrong, but it's dumb. You'll get
12 caught. You'll get convicted. You'll get seriously
13 punished. And to the extent that the sentence sends a
14 deterrent message to you, it will protect the public in
15 the future.

16 I don't find that you need any vocational training
17 or medical care, but I will recommend that you be
18 offered drug treatment while you're in prison. I think
19 you've been doing a good job, the last couple of years,
20 and it shows you have discipline, as well as
21 intelligence, but up until now, not wisdom. But I want
22 that drug treatment to be available to you in prison as
23 well as when you get out of prison.

24 And I've given some thought to the guidelines and
25 they describe, um, what the Sentencing Commission thinks

1 should usually be the range for a person like you who
2 did what you did, and sometimes I give a lower sentence,
3 but I just don't see a good reason to give a lower
4 sentence here. Sometimes I even give higher sentences
5 and I think a higher sentence would be reasonable, but
6 the sentence that I've given you should be sufficient
7 and therefore I'm not imposing a higher sentence.

8 When you get out, you'll be under the supervision
9 of the Probation Department for 3 years and it's going
10 to be important that you continue to work with
11 Probation, as you've worked with Pretrial Services, and
12 that you behave.

13 I've proposed a \$75,000 fine because that seems to
14 be roughly what you made from this and I think you have
15 the potential to honestly earn money in the future,
16 although your opportunities will be injured by this
17 conviction. You know, you earned that money, so you're
18 going to have to pay that fine.

19 You'll be on supervised release, as I said, for 3
20 years. If you commit any further crimes, you'll get
21 caught, you can get brought back in front of me, you can
22 be locked up for 3 more years in this case, and then
23 you'll be prosecuted for whatever caused you to have
24 your supervised release revoked here. So I hope, for
25 your sake, really, that this sentence will serve its

1 purpose.

2 You had an opportunity to go to college at an
3 young age and you were immature and you apparently
4 abused drugs and you lost that chance. You had an
5 opportunity for a fine career in a growing field,
6 technology, and you weren't satisfied with that,
7 previously. So when you have to start all over again, I
8 hope you'll be determined to use your intelligence and
9 your energy only for honest purposes and I hope that you
10 succeed. You may be seated.

11 (Defendant is seated.)

12 THE COURT: Now, there's a question as to
13 whether the defendant should begin serving his sentence
14 today or whether he wishes to request an opportunity to
15 self report.

16 MR. BRACKLEY: Judge, I would respectfully
17 request the opportunity that he self report.

18 THE COURT: What's the government's view on
19 that?

20 MR. HEYMANN: Your Honor, if I could take that
21 in two parts. The Government has no evidence and sees
22 no evidence of his being a danger to the community right
23 now, you know, that the -- either for his previous
24 offenses here or in any allegations that have occurred
25 over the past several months. Um, the government is

1 concerned, however, that he has not told any family
2 members, that he has no apparent ties to hold him in
3 place, and that he's now facing a lengthy sentence, and
4 under those circumstances it's difficult to conclude, by
5 clear and convincing evidence, that he's not a
6 likelihood of flight. It's that second prong that
7 causes the government pause.

8 THE COURT: Well --

9 MR. HEYMANN: But, to be clear, he has
10 otherwise not -- he has appeared here today and has not
11 otherwise violated any of his conditions.

12 THE COURT: My question to you is not
13 rhetorical. I don't know that -- I haven't thought
14 through what the standard for being released pending
15 appeal applies because I don't -- because it appears to
16 me, although it may not ultimately be up to me, that
17 he's waived his right to appeal and usually the question
18 on self-reporting doesn't get analyzed in that
19 framework, but perhaps it should.

20 But I guess that's the -- and I'll actually say
21 the following. The motion that Mr. Brackley filed to
22 continue talked about the defendant needing drug
23 treatment or maybe mental health counseling, and I know
24 that this is stressful. I asked the Pretrial Services
25 to check with Pretrial Services in New York. They tell

1 me, um, what's been confirmed by the defendant today,
2 that he's been complying with the conditions of his
3 release other than that state court case that will have
4 to be resolved. He's been drug tested about three times
5 a month and he's never tested positive for narcotics.

6 I've been alert to whether there was any question
7 about his competence. The discussion he had with me
8 shows that he understands what's going on. He was able
9 to express himself very well, although he didn't
10 persuade me not to put him in prison. But I guess that
11 is the question, Mr. Brackley, and it's possible that
12 Mr. Zaman should speak to it.

13 Although he has obeyed the conditions of his
14 release up till now, why should I be comfortable that if
15 I give him a month to self report or something like
16 that, he's not going to take off?

17 MR. BRACKLEY: Judge, his conduct, in all
18 respects, is -- he has been under stress, there's no
19 question about it, but even the reporting of the other
20 arrest, his appearances in court on that matter, and I
21 believe, Judge, his desire to see this thing through, as
22 he has even until today, that I don't believe he's any
23 flight risk, Judge.

24 There is a concern with his family. I have spoken
25 to him about that at great length. Of course, though,

1 we were not in a position to have letters from his
2 family or some of his close friends, as usually you
3 would see, and it was an odd kind of a situation.

4 THE COURT: Well, let me see if I understand
5 that. In other words, you didn't overlook the
6 possibility of getting letters from his family, but
7 you're telling me that he asked you not to let his
8 family know what's going on?

9 MR. BRACKLEY: From the very beginning, your
10 Honor, that's correct, and for the reasons that he
11 stated to your Honor, that he just did not want to bring
12 the shame upon himself to his family.

13 THE COURT: And that's helpful because, you
14 know, usually, or often there would be letters like
15 that, but now I know that -- well, Mr. Zaman, do you
16 agree with what Mr. Brackley just told me?

17 THE DEFENDANT: Yeah. Um, I didn't think
18 about my friends, though, for character witnesses and
19 stuff. I could have gotten that for sure. And if -- I
20 basically will appreciate -- I mean, I'm looking at a
21 long sentence and the month will really let me sort out
22 things like, you know, my possessions and, you know,
23 maybe even I'll have to, you know, explain to my family
24 why I'm going to be away for almost four years.

25 THE COURT: All right. You're not on

1 electronic monitoring now, are you?

2 THE DEFENDANT: No.

3 THE COURT: I'm -- do you understand that if I
4 let you go for about a month and let you self report and
5 you take off, it's very likely you're going to get
6 caught?

7 THE DEFENDANT: I do understand, your Honor.

8 THE COURT: And when you get caught, you'll
9 probably get a couple of extra years for that?

10 THE DEFENDANT: Yes, your Honor.

11 (Pause.)

12 THE COURT: All right. Today is Thursday.
13 Are you prepared to -- where do you live now, in New
14 York City?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you have a telephone?

17 THE DEFENDANT: Um, I have one at home and I
18 have one checked in downstairs.

19 THE COURT: Okay. But do you have a land-line
20 phone at home?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: So presumably if I ordered him to
23 be put on electronic monitoring, that could be
24 implemented, Mr. Cronin?

25 PROBATION OFFICER: Yes, your Honor.

1 MR. BRACKLEY: Judge, just one last request.
2 As to the drug program, and I don't know if you said it,
3 but would there be a specific recommendation for the
4 500-hour program?

5 THE COURT: If he's eligible for it and I
6 think the sentence is long enough.

7 Do you want drug treatment while you're in
8 prison?

9 THE DEFENDANT: Yes, your Honor.

10 (Pause.)

11 THE COURT: All right. Mr. Heymann, I'm
12 inclined to let the defendant self report on April 12th
13 to the institution designated by the Attorney General,
14 to permit him to return to New York, to reside in his
15 apartment, on electronic monitoring, and Pretrial -- I
16 think it's Probation, I guess, it would be at this
17 point.

18 PRETRIAL OFFICER: It would still be Pretrial
19 Services.

20 THE COURT: And Pretrial Services can
21 authorize him to go out for specific reasons at specific
22 times, but you can only be out at times that are
23 approved in advance by Pretrial Services, unless you
24 have a medical emergency or something like that. Do you
25 understand that?

1 THE DEFENDANT: So I wouldn't be able to like,
2 um -- I wouldn't be able to run errands and stuff?

3 THE COURT: Yeah, you wouldn't be able to run
4 errands unless you talk to Probation in advance.

5 THE DEFENDANT: About what exactly I'm doing?

6 THE COURT: Yeah, and if they authorize it.
7 And then you can only go where they tell you you can go.

8 THE DEFENDANT: So basically I'll be under
9 house arrest?

10 THE COURT: Yes, except when they authorize
11 you to go out.

12 THE DEFENDANT: Okay. I understand, your
13 Honor.

14 THE COURT: The alternative is I've got the
15 marshal here.

16 THE DEFENDANT: I know you do. Yes, your
17 Honor.

18 THE COURT: The other point is if you're gone
19 when you're not authorized to be gone, if it turns out
20 that you're -- well, just listen -- that you've gone
21 someplace that you're not authorized to go, they'll be
22 under the direction to take you into custody
23 immediately. Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: All right. Unless -- does the

1 government want to be heard further on this?

2 MR. HEYMANN: No, your Honor.

3 THE COURT: I think, in view of Mr. Zaman's
4 good performance on supervised -- on pretrial release,
5 that I'm persuaded that he's capable of obeying and
6 while there are reasons, stated by the government, that
7 I can't be -- that I can't feel guaranteed that he'll
8 report when he should report, when he must report, I'm
9 reasonably assured that he'll do it. And he's going to
10 be on electronic monitoring. If he's gone, Pretrial
11 Services will know about it promptly. They're ordered
12 to let me know immediately. And they'll be further dire
13 consequences.

14 So the defendant's release shall continue until
15 April 12th, 2010, when he shall report to the
16 institution designated by the Attorney General of the
17 United States. I will recommend that he be offered the
18 500-hour drug treatment program. His release will be on
19 the standard conditions and on the additional conditions
20 that he remain at home, subject to electronic
21 monitoring, to be established tomorrow.

22 You're to return to New York today and, if at all
23 possible, the electronic monitoring is to be established
24 tomorrow, and if not, I assume no later than Monday, and
25 I want to be informed when it's operative. And

1 Mr. Zaman shall stay in his residence except at times
2 when he's authorized by Pretrial Services to go out to
3 essentially arrange his affairs or for religious or
4 medical reasons. And, again, I'm directing Pretrial
5 Services to inform me promptly if Mr. Zaman violates the
6 conditions of his release.

7 The previously-imposed drug testing and treatment
8 requirements and reporting requirements will remain in
9 effect.

10 MR. BRACKLEY: Judge, for incarceration, would
11 it be proper to make a request for a specific housing
12 detention facility, would you entertain such a request?

13 THE COURT: Well, generally speaking, it's my
14 understanding that the Bureau of Prisons will place the
15 defendant in the facility with the proper designation
16 level that has space and is nearest to his home. So
17 except in extraordinary or very unusual circumstances, I
18 don't make a specific recommendation. But what
19 recommendation would you propose?

20 MR. BRACKLEY: There's a facility in
21 Morgantown, West Virginia that I have an understanding
22 has an exceptional program with respect to substance
23 abuse and individuals who have gone there have had much
24 success under those conditions.

25 THE COURT: Well, you and Mr. Zaman can

1 communicate with Probation and particularly with the
2 Bureau of Prisons. You can make that request. But I'm
3 not making that recommendation for two reasons. One,
4 that's really the responsibility of the Bureau of
5 Prisons. Two, I think all of the facilities to which he
6 might be designated will have drug treatment programs.
7 And, three, while I don't suggest he doesn't still have
8 a drug problem, he's done a good job over the last
9 couple of years. And, in fact, if he hadn't, he'd be
10 going out with the marshals today.

11 So this is up to you, Mr. Zaman. You're not a
12 little boy. I know this is hard for you to explain to
13 your family, but you're going to be gone for close to
14 four years and I did want to give you an opportunity to
15 try to handle this in the best way possible.

16 THE DEFENDANT: Thank you, your Honor.

17 THE COURT: All right. Is there anything
18 further in this matter for today?

19 MR. HEYMANN: No, your Honor.

20 THE COURT: The Court is in recess.

21 (Ends, 4:00 p.m.)
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24
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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do hereby certify that the foregoing record is a true and accurate transcription of my stenographic notes, on March 11, 2010, before Chief Judge Mark L. Wolf, to the best of my skill and ability.

/s/ Richard H. Romanow 04-06-10

RICHARD H. ROMANOW Date